

REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Claim 1 remains pending.

Claim 1 is patentable over Applicant's Description of the Related Art (Figs. 1-3) in view of Wallenstatter (US 6,338,356) and Aumann (US 5,529,823)

The rejection of claim 1 under 35 USC 103(a) as being unpatentable over Applicant's Figs. 1-3 in view of Wallenstatter and Aumann is hereby traversed.

First, the Patent & Trademark Office (PTO) admits at page 3, lines 2-3 that Applicant's Figs. 1-3 fail to disclose a material type used for the first and second pole holding tapes. The PTO asserts that Wallenstatter "suggests using a waterproof-coated material for elements of a portable tent enclosure" and further postulates that "[i]f the tent/poncho were waterproof, then the seams would have been waterproof." Present Official Action at page 3, lines 4-6. This is incorrect and unsupported by Wallenstatter.

Contrary to the PTO's assertion, Wallenstatter fails to disclose support for the PTO's bald assertions regarding waterproof seams. Wallenstatter fails to provide disclosure regarding whether any seams are waterproof or not. The only suggestion regarding the presence of seams is a possible implication based on FIG. 2. Based on the foregoing, Wallenstatter fails to disclose a waterproof-coated member as claimed in the present claimed subject matter. For at least this reason, withdrawal of the rejection is respectfully requested.

Second, the PTO appears to be arguing that Wallenstatter inherently discloses waterproof seams. The PTO is reminded that in order to rely upon a theory of inherency, the PTO is required to provide a factual basis and/or technical reasoning reasonably supporting the determination that the allegedly inherent characteristic **necessarily** flows from the prior art teaching. See Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). "The mere fact that a certain thing **may** result from a given set of circumstances **is not sufficient**." In re Robertson, 169 F.3d 743, 745, 49 USPQ3d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added). "A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present." Rosco v. Mirror Lite, 304 F.3d 1373, 1380

(Fed. Cir. 2002). The PTO has failed to support the inherency assertion regarding waterproof seams in Wallenstatter. For at least this reason, withdrawal of the rejection is respectfully requested.

Second, because Wallenstatter fails to disclose, directly or inherently, a waterproof member, e.g., the asserted waterproof seam, the combination of Wallenstatter with Applicant's Figs. 1-3 is improper and the rejection should be withdrawn. For at least the foregoing reasons, Wallenstatter fails to disclose or suggest a waterproof member for at least portions of the pole holding straps and the asserted motivation to combine is baseless. For at least this reason, withdrawal of the rejection is respectfully requested.

Third, notwithstanding the PTO's assertion of Official Notice, Applicant further points out that Applicant's Figs. 1-3 additionally fail to disclose at least a member attached by sewing line to a first pole-holding tape and a second pole-holding tape. For at least this reason, withdrawal of the rejection is respectfully requested.

Fourth, the PTO is reminded of MPEP §2144.03 which sets forth the standard for taking Official Notice as follows:

“[a]ny rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied. . . . [and] any facts so noticed should be of notorious character and serve only to ‘fill in the gaps’ in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.”

The PTO has failed to provide any support for the “principal evidence upon which the rejection is based. For at least this reason, withdrawal of the rejection is respectfully requested.

Further still, the PTO's assertion of inherency regarding “that the rigidity of a seam is inherently dependent upon the number of layer overlapped at the sewing lines” is traversed. The PTO has failed to meet the burden for inherency as set forth above. Other means are believed possible to modify the rigidity of tent seams. For example, as set forth by the PTO at page 3, lines 15-20, one means of reducing rigidity would be to “reduce the overall

thickness.” Thus, another possible approach might be reducing layer thickness in place of reducing layer numbers. Therefore, the allegedly inherent characteristic does not **necessarily** flow from the asserted Official Notice. The PTO is engaging in speculation without providing a reference teaching or suggesting what the PTO asserts. The PTO is requested to provide evidentiary support for the speculative assertions. For at least this reason, withdrawal of the rejection is respectfully requested.

Fifth, Aumann appears to describe a waterproofing seam applied to the exterior surface of a jacket and not a side waterproof tape arranged between the back surface of a waterproof-coated member and the inner surface of the tent fabric as claimed in claim 1. Aumann appears to describe waterproofing tape 23 applied to an exterior portion of jacket. See, e.g., column 5, lines 1-13 and column 5, lines 48-56. Assuming *arguendo* combination of Aumann with Applicant’s Figs. 1-3, Aumann would appear to suggest at most the application of waterproof tape to an exterior of the tent fabric 1 (i.e., the opposite face of the tent fabric from pole 2 and waterproof tape 3) extending over sewing line 21 and contacting the exterior of the other portion of tent fabric 1. Thus, Aumann fails to disclose or suggest a side waterproof tape arranged between the back surface and the inner surface of a tent fabric as claimed. For at least this reason, withdrawal of the rejection is respectfully requested.

For each of the foregoing reasons, claim 1 is patentable over the applied combination of references and the rejection is respectfully requested to be withdrawn.

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

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